

REMARKS

Claims 1, 3 and 4 are pending in this application. By this Amendment, claim 2 is canceled without prejudice to or disclaimer of the subject matter recited therein. Claim 1 is amended to incorporate the subject matter of canceled claim 2. Thus, no new matter is added. Claim 4 stands withdrawn.

I. Election Restriction

Claim 4 is withdrawn as being drawn to a non-elected species. However, in the Response to Election of Species Requirement filed on October 8, 2004, claims 1-4 were indicated as corresponding to the elected species.

The Office Action acknowledges the traversal of the Election of Species Requirement on the grounds that all species are sufficiently related that a thorough search for the subject matter of any one species would necessarily encompass a search for the subject matter of the remaining species, and that a search for remaining species would not be a serious burden to the Examiner.

The Office Action states that "the Examiner can insist upon restriction when distinct species are classified together but have a separate status in the art", relying on MPEP §802.02(b). However, the reliance on MPEP §802.02(b) is improper as the relevant section is misquoted. Rather, MPEP §802.02(b) recites "the Examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following: ... (b), A separate status in the art when they are classifiable together: ... separate status in the art may be shown by citing patents which are evidence of such separate status and also of a separate field of search" (emphasis added).

The outstanding Office Action does not provide a separate Form 892 indicating that an additional search was done from that of the parent application which included a similar restriction requirement or that an additional search must be done. Therefore, the Office

Action fails to establish "separate status" by citing patents as evidence. Furthermore, the only reference cited in this application was search for and cited in the parent application on a Form 892 as part of the September 10, 2002 Office Action. Thus, the Office Action fails to establish reasons for insisting upon restriction by showing separate status in the art by citing patents which are evidence of such separate status and also of a separate field of search. Accordingly, as there is no burden on the Examiner, rejoinder and examination of claim 4 is respectfully requested.

II. Allowable Subject Matter

The indication of allowable subject matter in claim 2 is appreciated. As the subject matter of allowable claim 2 is incorporated into the independent claim, claims 1 and 3, as well as claim 4, are in condition for allowance.

III. Claim Rejections Under 35 U.S.C. §102

Claims 1 and 3 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 4,296,342 to Young et al. The rejection is respectfully traversed.

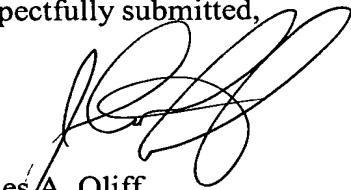
As amended claim 1 recites the allowable subject matter of claim 2, claim 1, as well as dependent claim 3, are not anticipated by Young. Accordingly, withdrawal of the rejection is respectfully requested.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1, 3 and 4 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

John W. Fitzpatrick
Registration No. 41,018

JAO:JWF/ldg

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OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

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